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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 81

RECTOR SIMMONS, JR., *et ux.*,

Appellants,

vs.

WEST HAVEN HOUSING AUTHORITY,

Appellee.

APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF THE STATE OF CONNECTICUT

APPELLANTS' BRIEF

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Appellee.

APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF THE STATE OF CONNECTICUT

APPELLANTS' BRIEF

Appellants appeal from the judgment of the Appellate Division of the Connecticut Circuit Court, entered on March 1, 1968, dismissing their appeal from a judgment of eviction for failure to post a surety bond.

Opinion Below

The opinion of the Appellate Division is reported officially in 5 Conn. Cir. 282, and unofficially in 250 A. 2d 527.

Jurisdiction of This Court

The jurisdiction of this Court to review the decision of the Appellate Division of the Connecticut Circuit Court is invoked under 28 U.S.C. § 1257(2). A statute of the State of Connecticut, Conn. Gen. Stat. § 52-542, is drawn in question on the ground of its being repugnant to the Constitution of the United States; the Appellate Division's decision is in favor of its validity.

This is an action of summary process (eviction), commenced by the appellee, Housing Authority of West Haven (hereinafter referred to as Housing Authority), in the Eighth Circuit Court at West Haven, Connecticut, on July 19, 1967* (R. 2, pp. 6-7). On January 16, 1968, a judgment of possession was entered in favor of the Housing Authority (A. 5, 7). Timely appeal was taken by the appellants (hereinafter referred to as Tenants) on January 18, 1968 (A. 9), and on the same day a motion to waive the surety bond on appeal required by Conn. Gen. Stat. § 52-542 was filed, on the grounds that requiring such a bond for the indigent Tenants would violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Tenants offered their personal bond in lieu of a surety bond, and sought permission to pay the claimed rent into escrow as it became due, as security for the Housing Authority (A. 10). The latter motion was denied by the trial judge on January 19, 1968 (A. 23).

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* Citations to the record shall include the Record number of the document, and, where possible, the page of the record. Where the Clerk has not indicated a record page number, a page reference will be to the page of the document. Citations to the Appendix shall be to the page of the Appendix.

On March 1, 1968, the Appellate Division of the Connecticut Circuit Court denied Tenants' motion to review the trial judge's refusal to permit a monthly deposit of rent in lieu of surety bond, and dismissed Tenants' appeal from the judgment of eviction because of their failure to post a bond with surety (A. 56, 60).

On June 25, 1968, the Supreme Court of Connecticut denied certification (A. 70), thereby making final the decision of the Appellate Division. Conn. Gen. Stat. § 51-265; Conn. Prac. Book, § 740 (1963 ed.); *State* v. *Cullum*, 149 Conn. 728, 729, 176 A. 2d 587 (1961).

Notice of appeal to this Court was filed on June 27, 1968, in the Eighth Circuit Court at West Haven (A. 71). Tenants' Jurisdictional Statement was filed with this Court on September 23, 1968, within the time provided for appeals by 28 U.S.C. § 2101 (c).

This Court noted probable jurisdiction on April 7, 1969.

Provisions of the United States Constitution

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute Involved

IX Gen. Stat. Conn., § 52-542

Sec. 52-542. Bond on appeal; stay of execution. When any appeal is taken by the defendant in an action of summary process, he shall give a sufficient bond with surety to the adverse party, to answer for all rents that may accrue or, where no lease had existed, for the reasonable value for such use and occupancy, during the pendency of such appeal, or which may be due at the time of its final disposal; and execution shall be stayed for five days from the date judgment has been rendered, but any Sunday or legal holiday intervening shall be excluded in computing such five days. No appeal shall be taken except within said period, and if an appeal is taken within said period execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken for the purpose of delay; and if execution has not been stayed, as hereinbefore provided, execution may then issue, except as otherwise provided in sections 52-543 to 52-548, inclusive.

The statute has been amended[1] by the 1969 Connecticut General Assembly, effective October 1, 1969, as follows:

[1] The effect of this amendment is discussed at pp. 56-60, *infra*.

When any appeal is taken by the defendant in an action of summary process, he shall, *within the period allowed for taking such appeal or within three days from the fixing of the bond, whichever is later,* give a sufficient bond with surety to the adverse party *in such amount as the court, on its own motion or on motion of the parties, may fix* to answer for all rents *that have accrued from the commencement of the action to the date of judgment and for all rents* that may accrue [or, where no lease had existed, for the reasonable value for such use and occupancy,] during the pendency of such appeal, or which may be due at the time of its final disposal *or, where no lease had existed, for the reasonable value for such use and occupancy that had so accrued or may so accrue;* and execution shall be stayed for five days from the date judgment has been rendered, but any Sunday or legal holiday intervening shall be excluded in computing such five days. No appeal shall be taken except within said period, and if an appeal is taken within said period execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken for the purpose of delay *or unless the defendant fails to give bond, as herein provided;* and if execution has not been stayed, as hereinbefore provided, execution may then issue, except as otherwise provided in sections 52-543 to 52-548, inclusive.

Question Presented

Whether the requirement of § 52-542 of the Connecticut General Statutes, that, as a condition precedent to their appeal from a judgment of eviction, the tenants post a bond with surety for rent which might accrue during the pendency of their appeal or which might be due at the time of its final disposal, regardless of their financial capacity to obtain such a bond and the availability of rational, nondiscriminatory methods of attaining the statute's purpose, deprived the tenants of liberty and property without due process of law and denied them the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution.

Statement of the Case

The Housing Authority operates a federally-assisted low rent housing project known as "Spring Heights" under the authority of 42 U.S.C. § 1401 et seq., and Conn. Gen. Stat. § 8-38 et seq. Tenants and their three minor children were residents of the Spring Heights project.

The Housing Authority brought an eviction action in the Connecticut Eighth Circuit Court at West Haven on July 19, 1967, alleging that Tenants had not paid their rent of $72.00 per month for the months of May, June and July, 1967 (A. 2). Tenants had stopped paying rent after the Housing Authority instituted a prior eviction action in May, 1967, based on nuisance (A. 27, 36).

On December 11, 1967,[2] Tenants filed an answer which denied the allegations of the complaint and affirmatively pleaded seven special defenses to the action (A. 27-30). Several of the defenses were addressed to the basic right of the Housing Authority under Connecticut law, to collect rent from Tenants, including its right to evict for non-payment of rent after the prior eviction had been brought.

Trial was had to the court on January 9, 1968, and judgment was rendered for the Housing Authority on January 16, 1968. The court's memorandum of decision (A. 5-6) contained no reference to the special defenses raised and briefed (A. 27, 34).

Believing the judgment to be erroneous, the Tenants sought to appeal, but were unable to obtain the bond with surety required by § 52-542 of the Connecticut General Statutes. That statute does not specify the amount of the bond to be posted, requiring a bond "sufficient" to save a landlord harmless from rent unpaid while an appeal is pending. No agreement was reached between Tenants and the Housing Authority as to the amount of the bond.

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[2] Tenants were represented by counsel who filed on their behalf timely and appropriate motions, in accordance with Connecticut practice, attacking the jurisdiction of the court and the sufficiency of the complaint in the expectation of terminating the litigation before trial, and seeking pre-trial discovery necessary to allow Tenants to defend against the action (R. 3, 7, 8, 12, 13, 18). Although Tenants' motions were promptly filed and Tenants' counsel sought no adjournments, the pleadings were not closed until December 11, 1967, due primarily to administrative delays and errors. For example, Tenants' demurrer, filed on August 28, 1967, was scheduled for hearing on September 19, 1967. Over the objection of both counsel, the hearing was postponed to September 26, 1967, and the decision was filed on October 4, 1967 (R. 1, Docket Nos. 16-24). Tenants' motion for disclosure, also filed on August 28, 1967, was not disposed of until November 13, 1967 (R. 1, Docket Nos. 15, 26).

Therefore, Tenants were forced to estimate that, at the rate of $72.00 per month, the claimed rent (R. 2, p. 6), a bond of at least a few hundred dollars would be required to protect the Housing Authority from delays in the appellate process. No surety company would write such a bond without liquid collateral in the full amount of the bond (A. 11). The financial affidavit filed with Tenants' motion to waive the bond (A. 12-13) showed that Tenants had no liquid assets and over $800. in debts.

Accordingly, on January 18, 1968, Tenants filed their appeal and moved the Eighth Circuit Court to waive the requirement of a bond with surety and allow them to appeal upon their posting of a non-surety bond and upon the express condition that they deposit in escrow, each month during the pendency of the appeal, an amount equal to the rent claimed by the Housing Authority (A. 10). The motion was accompanied by a financial affidavit of Tenants and an affidavit of their counsel as to her unsuccessful efforts to obtain a surety (A. 11, 12).

That motion was denied on January 19, 1968 (A. 23).[3] At the same time, without notice or hearing, the trial judge found that the appeal was being taken "for the purpose of delay," the effect of such a finding being to allow the immediate eviction of the Tenants under a separate provision of the same statute, Conn. Gen. Stat. § 52-542.[4]

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[3] Neither in its formal objection to the motion (A. 13) nor at the hearing on the motion (A. 14, 18, 19) did the Housing Authority raise any question as to Tenants' financial affidavit or their good faith. Tenants believe the latter is constitutionally irrelevant, in any case.

[4] To forestall their eviction, on January 30, 1968, Tenants filed an action in the federal court (No. 12388 D. Conn.) challenging the constitutionality of the statute and the acts of the trial judge

Before Tenants could have an appeal on the merits of the judgment of eviction, therefore, they now had to seek review of these actions of the trial judge, filing a motion for review in the Appellate Division of the Circuit Court on January 24, 1968 (A. 24). That motion urged upon the court the view that the statute, § 52-542, was unconstitutional in its demand of a surety bond even from those financially unable to obtain one.

On March 1, 1968, the Appellate Division denied the motion to review and dismissed the appeal for the failure to file a surety bond (A. 56, 60).[5] It reasoned that the right to appeal is not constitutional but is a statutory privilege to which one may resort only if he has strictly complied with the statutory provisions upon which such appeal is conditioned (A. 57, 58, 60).

Tenants petitioned the Supreme Court of Connecticut to certify the case for review, again arguing the unconstitutionality of § 52-542 (A. 64). Meanwhile the Housing Authority moved the Appellate Division to terminate the automatic stay of execution as provided for by the rules of the court, and that motion was granted on April 11, 1968 (A. 65, 66).[6] That decision is not on appeal here.

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thereunder. The action was dismissed by agreement, when the Housing Authority represented it would not evict pending Tenants' motion to review.

[5] It did not in any respect base its decision on the trial judge's finding that the appeal was taken for the purpose of delay; nor, in arriving at its decision, did it discuss that finding or make such a finding independently.

[6] To forestall their eviction, on April 19, 1968, Tenants filed an action in the federal court (No. 12510 D. Conn.) alleging the unconstitutionality of Conn. Gen. Stat. §52-542, and of the action of the Appellate Division terminating the stay of execution. Tenants' request for a preliminary injunction to restrain their eviction was

Certification was denied on June 25, 1968 (A. 70). Notice of appeal to this Court was filed on June 27, 1968 (A. 71). A motion to stay enforcement of the judgment of eviction, pending this appeal, was denied by Justice Harlan on July 16, 1968. The Housing Authority obtained its execution on July 26, 1968 (R. 48).

Even though their appeal was dismissed, Tenants have deposited the claimed rent into court as it became due for five of the six months they were in possession after the judgment of eviction. *There is on file with the Eighth Circuit Court and with the Federal District Court for Connecticut a total of $360., as security for the Housing Authority in lieu of a surety bond, were Tenants' appeal to be allowed.*

Summary of Argument

I. The statutory requirement that tenants, before they can appeal their evictions, post a bond with surety to cover all rents that may become due while their appeal is pending presents a serious obstacle to most tenants and an insurmountable financial hurdle to the poor. Indigent tenants are relegated to the commercial surety company, which charges a fee for its services and demands collateral in the full amount of the bond, as occurred in this case. Since the bond may amount to several hundred dollars, the fee and collateral will be beyond the reach of the tenant in poverty, as they were for the tenants here.

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denied, while retaining "for later consideration" the issues regarding Conn. Gen. Stat. §52-542. Tenants' appeal from this denial was dismissed as moot by the Second Circuit, since their eviction had not resulted from the action of the Appellate Division, but from the denial of certification by the Supreme Court of Connecticut. The action was dismissed voluntarily on August 3, 1968.

The legal effect of the failure to post the surety bond demanded is clear: dismissal of the tenant's appeal, as occurred in the case at bar. The tenant's appeal will be dismissed, even though financial inability precludes obtaining a surety bond, and even though the tenant can provide alternative security to the landlord, in a form better adapted to the latter's protection.

Just as the requirement of a transcript in *Griffin v. Illinois*, 351 U.S. 12, effectively prevented appeals by indigent defendants, so the unwavering demand of Connecticut law and landlords for a surety bond effectively bars poor tenants from the appellate process provided for all others.

II. Closing the courts of appeal in eviction actions has grave implications not only for the tenants involved but also for poor citizens as a class, for the legal system and for our society. Eviction from their home is obviously a calamity for poverty-stricken families, particularly in view of the shortage of low-income housing found to exist in most urban areas by Congress and the legislature. To lose that home summarily, without the opportunity to question the law's requirements or the court's action, is particularly harsh. The surety bond statute adds this burden to the poor tenant's lot.

Furthermore, the appellate process is the traditional route by which change of outmoded legal concepts is accomplished in our common law system. The law is bound to no more out-of-date notions than those springing from the feudal landlord-tenant relationship. In Connecticut, however, as in many other states, change through judicial reconsideration is foreclosed by an arbitrary precondition to tenants' appeals.

The legal system, too, suffers when trial judges are effectively freed from appellate supervision, particularly in cases where speed in disposition is emphasized to the degree it is in Connecticut's "summary process" for evictions. To the possibility of arbitrary action by a court secure in the knowledge it will not be reviewed is added the probability of error by a court hastening to render judgment.

Finally, what will be the consequences for a society which excludes citizens from its courts on grounds unrelated to the merits of their grievance? The presence of grievances among the poor and their lack of confidence in peaceful, legal ways of resolving them is well known. The unconditional demand for a surety bond from tenants, when they cannot provide it but can fulfill in other ways the law's legitimate goal, can only heighten these untoward tendencies.

III. Connecticut has denied to these Tenants their right of appeal from an eviction judgment when they were financially unable to purchase a bond with surety for the protection of the Housing Authority, their landlord, even though the Tenants proposed to provide security for rents lost as a result of their appeal in a way at least as well adapted as a surety bond to accomplish that admittedly legitimate objective. The constitutional consequences of the state's action are distinct in concept but alike in result: invalidation of the state statute which provided for this denial.

First, the State of Connecticut, by the statute in question, Conn. Gen. Stat. §52-542, and the actions of its courts in administering and enforcing the statute, effectively classifies appealing tenants on the basis of their financial ability

to obtain a surety bond. Those who can pay can appeal; those who cannot pay are foreclosed from appeal. Thirteen years ago this Court initiated a series of cases which have struck down the same type of economic discrimination over and over again. E.g., *Griffin* v. *Illinois*, 351 U.S. 12; *Douglas* v. *California*, 372 U.S. 353.

Although most often these cases have involved defendants in criminal cases, the Court has not limited the reach of the equal protection clause to such matters. *Smith* v. *Bennett*, 365 U.S. 708; *Long* v. *District Court of Iowa*, 385 U.S. 192; *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663. Neither the wording, history, nor principle of the equal protection guarantee suggest that civil litigation is beyond the pale of the Amendment. The seriousness of the matters involved in civil litigation (eviction, findings of child neglect, loss of government benefits, heavy money judgments, etc.) indicates that the time is ripe for a square holding that equal justice is an element of civil, as well as criminal, law.

There is ample support for that result. Wealth has been held to be a "suspect criterion," like race, for governmental classifications, *Harper* v. *Virginia Bd. of Elections, supra*, and, the classification effected by the Connecticut surety bond statute infringes upon a fundamental citizen interest, equal access to the courts. The strict scrutiny which this Court traditionally accords discriminations of either character will not leave standing a "blunderbuss method" of achieving a legitimate governmental objective when a less drastic means is available. *Shapiro* v. *Thompson*, —— U.S. ——, 37 U.S.L.W. 4333; *Carrington* v. *Rash*, 380 U.S. 89; *McLaughlin* v. *Florida*, 379 U.S. 184. The deposit of rent in escrow each month, while the appeal proceeds as offered

by the tenants in this case, is tailored to meet the statute's objective but does not burden the poor unjustly. Therefore, the classification which denies appeal to tenants only because they cannot purchase a surety bond must fall.

Even applying the conventional, permissive test to the classification at issue does not save it. For the statute lumps together both those who can and those who cannot secure their landlords from loss and burdens both classes with denial of an appeal if they cannot obtain the surety bond it demands. In other words, the class denied appeal is over-inclusive, does not include only those similarly situated with respect to the law's purpose, and is for that reason, unconstitutionally constructed. See, e.g., *Rinaldi* v. *Yeager*, 384 U.S. 305.

Equal protection of the laws, then, does not permit Connecticut to discriminate against its poor citizens in the manner of §52-542.

Second, the surety bond requirement operates to deprive tenants of their liberty and property without due process of law in several respects.

There is the due process clause's application, concurrent with the equal protection clause, to financial discrimination, *Griffin* v. *Illinois, supra.* In view of its failure to relate to the statute's purpose, conditioning tenants' appeals on their posting a surety bond, regardless of their ability to do so or to provide alternate security, is simply without reason. "[T]he constitutional right under the Due Process Clause is simply the right not to be denied an appeal for arbitrary or capricious reasons." *Id.* at 37 (dissenting opinion of Harlan, J.).

Furthermore, the Fourteenth Amendment's due process clause protects from state interference the First Amendment right to petition the courts for a redress of grievances, recently elucidated by this Court. *NAACP* v. *Button*, 371 U.S. 415; *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1; *United Mine Workers* v. *Illinois Bar*, 389 U.S. 217. And where a state has chosen to extend a right to appeal, as Connecticut has in eviction cases, the scope of the constitutional right to litigate is similarly broadened.

Though not absolute, the right to litigate demands (1) a "compelling" state interest, (2) pursued by "means that [do not] broadly stifle fundamental personal liberties" before it will yield to limitations. *Bates* v. *Little Rock*, 361 U.S. 516; *Shelton* v. *Tucker*, 364 U.S. 479. Protection of the landlord's interest in continued rent collection can be achieved by a restriction far narrower than one which excludes from appeals those who cannot purchase a surety bond; it need only exclude those who cannot give security in an equally effective way. Thus, the legislature and the courts have too broadly restricted the right to litigate in eviction actions.

The surety bond statute effectively consigns the indigent tenant to the commercial insurance company and thus delegates to a private party, operating for profit, control over access to the courts. The potential for arbitrariness and favoritism and the absence of any check on the private party's actions in denying access lead to the conclusion that such delegation does not comport with due process principles. *Lane* v. *Brown*, 372 U.S. 477; *Anders* v. *California*, 386 U.S. 738.

The statute violates due process in yet another way: by giving the trial judge discretion to set the amount of the

appeal bond with no rational standard to guide him in exercising that discretion. The statute's vagueness on this score allows him to foreclose review of his own decisions.

Finally, a recent amendment of §52-542 compounds the practical and constitutional problems presented by the surety bond prerequisite. As of October 1, 1969, tenants must post a surety bond to cover back rents, as well as rents possibly lost pending appeal. Inasmuch as the landlord has not obtained and cannot obtain a judgment for rent in an eviction action, this stricture promotes no proper state purpose, and it deprives tenants of property without a hearing into their right to retain it. *Sniadach* v. *Family Finance Corp.*, —— U.S. ——, 37 U.S.L.W. 4520. Thus, the amended version of the surety bond statute here in question also contravenes the due process and equal protection clauses of the Fourteenth Amendment.

ARGUMENT

I.

The Requirement of a Bond With Surety as a Condition Precedent to Appeal From a Judgment of Eviction Is a Serious Financial Obstacle to Access to Appellate Courts for Most Tenants. It Effectively Precludes Indigent Tenants From Appealing Their Eviction.

Summary process is a statutory form of action which took the place of ejectment, an action at law. The process is "summary" in that it is abbreviated for speed. Special provisions as to time are made for return dates, appearances, pleading and trial, all aimed at a judgment in the shortest time possible.

Because of this statutory abbreviation of the usual deliberate and considered progress of the law, it would seem that review of the proceedings is essential. Indeed, Connecticut provides for an appeal from judgment in a summary process action. Conn. Gen. Stat. §52-534. Due process of law in summary process, therefore, as regulated by state law, includes the right of appeal. *Walker* v. *Sauvinet,* 92 U.S. 90, 93.

The statute called into question by this appeal requires a tenant who wishes to appeal his eviction to

> "give a sufficient bond with surety to the adverse party, to answer for all rents that may accrue or, where no lease had existed, for the reasonable value for such use and occupancy, during the pendency of such appeal, or which may be due at the time of its final disposal. . . ."

Tenants here were willing to post bond, in the sense of a personal undertaking, and were willing to offer security by paying the claimed rent monthly into court but could not afford to post a bond with surety.[7]

The requirement of a bond with surety is strictly construed: it does not mean a bond with security. For example, in *Clinch Valley Lumber Corp.* v. *Hagan Estates Inc.*, 167 Va. 1, 187 S.E. 440 (1936), appellant executed a personal bond and in lieu of surety deposited a certified check in the amount of the bond. His appeal was dismissed for want of a surety.

The surety requirement was similarly insisted upon by the Appellate Division of the Connecticut Circuit Court in the decision on appeal here, even though Tenants offered to deposit rent monthly in court and file their personal bond.

> "A sufficient bond with surety is essential to a valid appeal." (A. 58)
>
> "Want of a bond with surety, where bond with surety is by statute a prerequisite of review, furnishes a sufficient ground of dismissal of the appeal." (A. 60)

Although the statute in question demands a surety bond, it is indefinite as to the amount of the bond, since it requires a bond "to answer for all rents that may accrue . . .

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[7] A surety, generally, is a person who binds himself for the payment of a sum of money, or for the performance of something else for another who is already bound for the same. *Young* v. *McFadden*, 125 Ind. 254, 25 N.E. 284 (1890); *Rawleigh Co.* v. *Warrington*, 199 Atl. 666 (Del. 1938); see *Bernd* v. *Lynes*, 71 Conn. 733, 43 Atl. 189 (1899); 40A. WORDS & PHRASES, Surety (1964). By statute, a surety may also be a surety company. Conn. Gen. Stat. §38-178.

during the pendency of such appeal or which may be due at its final disposal." Conn. Gen. Stat. §52-542. Tenants have surveyed the few cases in which evictions were appealed to determine the average appeal period. See Table I appended hereto. In the six cases where the time element could be determined, the shortest time between the judgment of eviction and the appellate decision was 34 days, the longest time 117 days, and the average time 80 days. On this basis, a tenant could expect to post a surety bond for up to four months rent. Since the rent herein was $72. per month, Tenants' bond might have been $216-288. They now have on deposit $360.

Where the parties cannot agree as to the amount of the bond, the trial judge sets the amount. *Housing Authority* v. *Jones,* 5 Conn. Cir. 350, 252 A. 2d 465 (1968). In *Montlick* v. *Bridges,* CV6-40074 (Sixth Cir. Conn.) where rent was $70. per month, the court set bond at $700., which was 10 months' rent. (A copy of that decision is annexed hereto as Exhibit A.)

No private bondsman would be surety for Tenants here without full cash collateral, which the indigent Tenants clearly could not supply. Even if a private bondsman were available, there would be an additional fee for his services. Without doubt, the surety bond requirement prevents appeal, for these Tenants and all indigent tenants. This Court has found financial requirements of substantially lesser amounts than those involved here to be intolerable barriers. E.g., *Burns* v. *Ohio,* 360 U.S. 252. Even middle class tenants, paying perhaps $200. per month rent, would be hard put, or loathe, to put up $600 to $2000 on short notice in order to appeal their eviction.

The statute in question is also unclear as to whether back rents are to be included in the amount of the bond. It has recently been amended by the Legislature, however, to require the bond "to answer for all rents *that have accrued from the commencement of the action to the date of judgment and for all rents* that may accrue," 1969 P.A. 296, even though a separate suit for unpaid rent is the ordinary procedure and no judgment for rent enters in summary process. Such a provision is, in effect, a penalty for exercising the statutory right to appeal, and compounds the practical and constitutional problems presented by the requirement of a surety bond.

The statute has now been amended to provide that execution may issue if the bond is not provided. Thus the landlord has absolute and arbitrary power to get possession of his premises and prevent an appeal where defendant is indigent, no matter how worthy the tenants' claims may be.

In practice, under the present statute, and more so under the statute as amended, an indigent cannot contest the eviction judgment.

Although Tenants could not post a bond with surety, they could (and did) pay the claimed rent monthly into court. The landlord may be better off with the rent in court rather than in the hands of a surety, which may vigorously contest its obligation to pay over the money.

Paying the rent monthly into court is fairer to both the landlord and tenant, since the appeal may go on for a longer or shorter time than originally estimated. The landlord would not be undersecured by too conservative a bond, nor the tenant overburdened by too harsh a bond. Where the amount of rent or the right of landlord to it is

not contested, the escrowee could pay it over to the landlord without delay, permitting the landlord, instead of the surety, use of the money pending appeal.

Yet the statute herein provides that an evicted tenant, in order to appeal, must post a bond of indefinite amount, possibly several hundred dollars, and must pay a fee to a bondsman, if he finds one willing to write a bond, to answer for rents for which no judgment has entered and no determination has been made as to amount or reasonableness, or even whether any rent at all is due and owing.

II.

Appellate Courts Must Not Be Closed to the Poor.

> "This Court would have to be willfully blind not to know that there have in the past been prejudicial trial errors which called for reversal of convictions of indigent defendants, and that the number of those who have not had the means for paying for the cost of a bill of exceptions is not so negligible as to invoke whatever truth there may be in the maxim de minimis." *Griffin* v. *Illinois,* 351 U.S. 12, 23 (Frankfurter, J., concurring).

Evictions, like convictions, may be unwarranted, arbitrary, or actually illegal, yet in the absence of judicial review they will stand unchallenged, "condemn[ing] one to an indeterminate sentence of inadequate housing or no housing at all." Willging, *Financial Barriers and the Access of Indigents to the Courts,* 57 GEO. L.J. 253, 270 (1968).

The instant case is a good example. Tenants properly raised in the state court several special defenses to the eviction action (A. 27-33) and thoroughly briefed and argued them (A. 34-52). Yet the trial judge's memorandum of decision summarily "finds the issues for the plaintiff [Housing Authority]," without discussion or explanation (A. 5, 6). When Tenants sought review of the judgment, they were met with the insuperable obstacle of posting a bond with surety in the amount of several hundred dollars. Their reasonable offer to save their landlord harmless from losses of rent, by depositing rent in escrow while the appeal was pursued (A. 10, 16, 19), was rejected.

The importance of equal access to the appellate process goes far beyond the remedying of individual injustices, however.

> "It is part of the larger problem regarding the inability of indigent and deprived persons to voice their complaints through the existing institutional framework, and vividly demonstrates the disparity between the access of the affluent to the judicial machinery and that of the poor in violation of the Equal Protection Clause." *Williams* v. *Shaffer,* 385 U.S. 1037.

Denial of access affects all the poor, not just those parties involved in litigation. The growth and development of the law depends on the adversary system. Outmoded legal doctrines change when they are challenged in the appellate courts by those who think they are no longer fair. The law as it affects poor persons is nowhere more bound to out-of-date concepts than it is in the area of landlord-tenant relations. See generally, Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant,* 77 YALE

L.J. 1368, 1371 (1968); Le Blanc, *Landlord-Tenant Problems,* Conference Proceedings, the Extension of Legal Services to the Poor 51 (U.S. Dept. of H.E.W. 1964).

Many proposals have been made for using the judicial process to bring about reform in this field; e.g., Schier, *Protecting the Interests of the Indigent Tenant: Two Approaches,* 54 CAL. L. REV. 670 (1966); Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change,* 54 GEO. L.J. 519 (1966). But, if the appellate courts of Connecticut are closed to the poor, this avenue of legal reform is likewise closed.

The relationship between equal access to the courts and far-reaching substantive reform is vividly illustrated by the recent case of *Edwards* v. *Habib,* 397 F. 2d 687 (D.C. Cir. 1968). At an early stage of the appellate process, the indigent tenant was permitted to maintain her appeal upon conditions similar to those proposed by appellants in this case. *Edwards* v. *Habib,* 366 F. 2d 628 (D.C. Cir. 1965). The ultimate decision of the Court of Appeals that a landlord may not evict his tenant in retaliation for her reporting of housing code violations to governmental authorities is a landmark in the law of landlord-tenant relations, affecting hundreds of thousands of tenants in Washington, D.C. alone.

This Court itself has recognized the significance of litigation as a mode of law reform.

> "[U]nder the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP* v. *Button,* 371 U.S. 415, 430.

As Justice Harlan put it:

> "Litigation is often the desirable and orderly way of resolving disputes of broad public significance, and of obtaining vindication of fundamental rights." *Id.*, at 453 (dissenting opinion).

The poor are a minority in America today. If the courts are closed to them, particularly the courts of appeal, there can be no meaningful change in the law through litigation on their behalf.

Access to the appellate courts is particularly important in the area of eviction, to insure the integrity of the system of the law. Connecticut law emphasizes speed in summary process, requiring pleadings to go forward every three days, almost a physical impossibility when the mails must be used. Conn. Gen. Stat. §52-534. The burden this places on the courts, in addition to the press of regular business, cannot be doubted. But equally important is the burden of eviction on poor tenants.

Because the surety bond requirement makes the likelihood of an appeal minimal, the press of court business and the statute's emphasis on speed may cause less than due consideration to be given to a tenant's defenses.

Thus, to the possibility of arbitrary action by a court secure in the knowledge it will not be reviewed, is added the probability of error by a court hastening to render judgment. Only where an appeal is more than a remote possibility can our system of checks and balances operate to guarantee the fairness of the initial hearing.

There is yet another way in which the issue here assumes the greatest importance. The existence of summary

eviction procedures in which there is a substantial economic obstacle to a tenant's challenging the judgment of eviction places an enormous amount of arbitrary power in the hands of the landlord, which he exercises in collaboration with the state. Such imbalances of power, and the resentment they engender in the indigent citizen, have been pinpointed by the Report of the National Advisory Commission on Civil Disorders (U.S. Government Printing Office, 1968) (hereinafter referred to as *Report*) as a principal cause of tension, and resulting riots.

> "[G]hetto residents increasingly believe that they are excluded from the decision-making process which affects their lives and community. This feeling of exclusion . . . has engendered a deep-seated hostility toward the institutions of government." *Report,* p. 149.

Grievances concerning the inadequacy of housing for the poor and the discriminatory administration of justice were listed by the Commission as contributing factors to the riots which occurred in 1967. *Report,* p. 81. And the establishment of effective mechanisms for hearing and responding to the grievances of the poor was set as an immediate step toward reducing tensions which lead to riots. *Report,* p. 151.

The significance of the everyday disputes between landlords and tenants and the role of the legal process in resolving those disputes was pointed out in this passage from the Commission's report:

> "Among the most intense grievances underlying the riots of the summer of 1967 were those which derived from conflicts between ghetto residents and private

> parties, principally white landlords and merchants. Though the legal obstacles are considerable, resourceful and imaginative use of available legal processes could contribute significantly to the alleviation of resulting tensions. Through the adversary process which is at the heart of our judicial system, litigants are afforded a meaningful opportunity to influence events which affect them and their community." *Report,* p. 152.

But, did the Tenants here, blocked by the state's surety bond requirement from resorting to the appellate courts for review of their eviction, have a "meaningful opportunity to influence" this crucial event in their lives? Do other poor tenants in Connecticut, and in other states where such laws exist, perhaps wrongfully and arbitrarily deprived of their homes, have equally available to them the legal processes which can vindicate their claims and prevent their uprooting?

It is irrelevant to say that the state need not establish appellate review at all. For, as this Court said in *Griffin* v. *Illinois,* 351 U.S. 12, after conceding this point:

> "[T]hat is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." *Id.* at 18.

As pointed out above, the landlord may always appeal an adverse judgment; his indigent tenant may never appeal.

> "The State is not free to produce such a squalid discrimination." *Id.* at 24 (Frankfurter, J., concurring).

III.

Denying Tenants Access to Connecticut's Appellate Courts Because They Are Financially Unable to Give a Bond With Surety to Their Landlord Deprives Them of Liberty and Property Without Due Process of Law and Denies Them the Equal Protection of the Laws.

The Fourteenth Amendment of the United States Constitution forbids a state to "deprive any person of life, liberty or property, without due process of law" or to "deny to any person within its jurisdiction the equal protection of the laws." The Connecticut statute in question, Conn. Gen. Stat. §52-542, requires a tenant, as a precondition to his appeal from a judgment of eviction, to give a "sufficient bond with surety" to his landlord, "to answer for all rents that may accrue or, where no lease had existed, for the reasonable value for such use and occupancy, during the pendency of such appeal, or which may be due at the time of its final disposal. . . ."[8] The question presented by this case is whether this surety bond statute deprives persons unable to appeal because of its terms of their liberty and property without due process, or denies them equal protection of the laws.

Tenants have shown that the statute's requirement of a surety bond places a serious obstacle in the path of tenants in Connecticut when they seek to challenge eviction judg-

[8] The statute has recently been amended to require that the surety bond be in an amount sufficient to cover not only rents accruing during the appeal but also rent claimed to have accrued from the commencement of the action to the date of judgment in the trial court. P.A. No. 296 (Conn. Gen. Assembly 1969). The amended statute will take effect October 1, 1969. Conn. Gen. Stat. §2-32. See pp. 56-60, *infra*.

ments on appeal, an insurmountable obstacle in the case of poor tenants. The harmful consequences—to these tenants, to other indigent tenants, to the poor as a class, and to society—of thus closing the appellate courts have also been demonstrated. Reason, constitutional principle and precedent permit, indeed require, the court to remove this "money hurdle erected by [the] State," *Griffin* v. *Illinois,* 351 U.S. 12, 23 (Frankfurter, J.), and its unfortunate effects.

A. The Tenants' Interests in Possession of the Premises Are Protected by the Fourteenth Amendment.

This Court has rightly characterized shelter as one of the "necessities of life." *Shapiro* v. *Thompson,* —— U.S. ——, 37 U.S.L.W. 4333, 4335. The United States Congress (42 U.S.C. §1401 et seq.) and the Connecticut General Assembly (Conn. Gen. Stat. §8-38 et seq.) have recognized the importance and the peculiar difficulty for a low income family to obtain decent, safe and sanitary housing. For example, the latter has found (Conn. Gen. Stat. §8-38)

> that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which families of low and moderate income can afford and that such families are forced to occupy overcrowded and congested dwelling accommodations; that such conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that such conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities; . . . .

See also *Williams* v. *Shaffer,* 385 U.S. 1037, 1039 (dissenting opinion). Here, Tenants have been evicted from a low income housing project operated by the Housing Authority under the above-mentioned statutes.

A leasehold is a formal property interest in Connecticut. The landlord has conveyed the premises to the tenant for years or at will; the tenant has exclusive control and possession of the premises. *Jo-Mark Sand & Gravel Co.* v. *Pantanella,* 139 Conn. 598, 601, 96 A. 2d 217 (1953); *Carroll* v. *Cooney,* 116 Conn. 112, 115, 163 Atl. 599 (1933). Significantly, the Supreme Court of Connecticut has interpreted the words "property owner" in a zoning ordinance to include a lessee. *Winslow* v. *Zoning Board,* 143 Conn. 381, 386-87, 122 A. 2d 789 (1956).

This Court has stated:

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property." *Shelley* v. *Kraemer,* 334 U.S. 1, 10.

Not only Tenants' property, but also their liberty is at stake.

> "The liberty mentioned in [the fourteenth amendment] means not only the right of the citizen to be free from the mere physical restraint of his person by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; *to live* and work *where he will;* to earn his livelihood by any lawful calling; to pursue any livelihood or avocation,

> and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." *Allgeyer* v. *Louisiana,* 165 U.S. 578, 589 (Emphasis added.) *Accord, Bolling* v. *Sharpe,* 347 U.S. 497, 499.

It is plain, then, that the Tenants' loss is cognizable under the Fourteenth Amendment's due process clause.

B. The Requisite State Action Is Present.

The responsibility of the state for the deprivation effected by the surety bond requirement is equally clear.

The surety bond is required by state statute, and, as pointed out in part I, *supra,* effectively imposes strict financial criteria on those tenants who wish to appeal. Moreover, the courts of the state are intimately involved in the enforcement of the statute's requirement. *Shelley* v. *Kraemer,* 334 U.S. 1. It is the trial court which fixes the amount of the bond required, *Housing Authority* v. *Jones,* 5 Conn. Cir. 350, 252 A. 2d 465 (1968), and the appellate court will dismiss an appeal by a tenant for want of a surety bond, as occurred here (A. 62), *Housing Authority* v. *Jones, supra.* Moreover, in this case the tenants moved the trial court to waive the requirement of the surety bond and allow them to appeal upon their giving alternate security to the Housing Authority, pointing out the invidious effects of the statute (A. 10).

In denying that motion (A. 23, 62), the action of the state's judiciary confirmed the effect of the statute to deny on financial grounds the right of appeal.

C. The State's Prescription of a Surety Bond as a Condition Precedent to the Tenants' Appeal Effects Invidious Discrimination Among Tenants on the Basis of Wealth, and, Therefore, the Dismissal of the Appeal Because of Their Financial Inability to Provide Such a Bond Denied Them the Equal Protection of the Laws.

The effect of the surety bond requirement is to divide tenants who wish to appeal eviction judgments into two classes indistinguishable from each other except that one class is composed of tenants who can pay the fee and post the liquid collateral required before a surety company will provide the bond required by the statute, and the second composed of tenants who cannot meet these monetary standards. On the basis of this sole difference the first class is granted and the second class denied the right of appeal from a judgment which, unless reversed, will cost tenants the roof over their heads. The appellate courts are closed to the second class of citizens as effectively as if the state had a rule that only those tenants possessed of a certain amount of assets could appeal adverse decisions.

1. *The Equal Protection Clause Regulates Financial Discrimination Which Limits Access to Appellate Courts in Civil Cases.*

Thirteen years ago this Court began to give content to the phrase "equal protection" insofar as it limits discrimination by a state on the basis of wealth. *Griffin* v. *Illinois*, 351 U.S. 12. The Court began in *Griffin* with this premise:

> "Both equal protection and due process emphasize the central aim of our entire judicial system—all people

> charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.'" *Id.* at 17.

It concluded that:

> "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Id.* at 19.

Moreover:

> "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance." *Id.* at 18.

On the basis of these principles this Court held that an indigent state prisoner could not be denied a free trial transcript, the transcript being in effect a prerequisite to appellate review of his conviction.

Similarly, the Connecticut statute challenged by this appeal, Conn. Gen. Stat. §52-542, makes the posting of a bond with surety for all rents that may accrue during the pendency of a tenant's appeal a prerequisite to appellate review of his eviction. Here, the Tenants' appeal was dismissed for want of the surety bond. The indigent tenant cannot post a surety bond because of his poverty; therefore, he cannot appeal because of his poverty, and for no other reason.*

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* Connecticut has established an appellate procedure for review of eviction judgments. Because it has done so, whether appeal is

Moreover, as early as *Griffin* the Court made it clear that the right to equal access to the courts of appeal was independent of any general constitutional right of appeal.

> "It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. . . . But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." *Griffin* v. *Illinois, supra* at 18.

And just last term the Court restated its view, in *Williams* v. *Oklahoma City,* —— U.S. ——, 37 U.S.L.W. 4524.

The fact that the litigant in *Griffin* was a criminal defendant explains the Court's emphasis on the constitutional requirement of equal justice in criminal cases. But the equal protection clause need not be and should not be so limited in operation. It was intended to guarantee equal opportunity to exercise all civil rights, including the right to seek judicial redress of grievances:

> "The Fourteenth Amendment . . . undoubtedly intended . . . that all persons . . . should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts. . . ." *Barbier* v. *Connolly,* 113 U.S. 27, 31.

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ordinarily a "privilege" rather than a "right" becomes constitutionally irrelevant. *Shapiro* v. *Thompson,* —— U.S. ——, 37 U.S.L.W. 4333, 4335 n. 6; *Smith* v. *Bennett,* 365 U.S. 708, 713-14; *Frank* v. *Mangum,* 237 U.S. 309, 327. See Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law,* 81 Harv. L. Rev. 1439 (1968).

Indeed this Court has not restricted the force of this protection to criminal cases. The notion that merely because of a proceeding is styled a "civil" proceeding the protection of the Fourteenth Amendment is not available to prospective indigent litigants has already been rejected. *Smith* v. *Bennett*, 365 U.S. 708. There, a habeas corpus writ was not available to a state prisoner because he could not pay the customary $4.00 filing fee. The Court refused to "quibble as to whether in this context it [habeas corpus] be called a civil or criminal action." *Id.* at 712. The remedy sought to be invoked by the petitioner was an important one, and access to it could not be denied him because of his poverty merely by calling it a "civil" action.

While the unanimous *Smith* opinion is careful to limit itself to the case before it, *id.* at 713, what the case does indicate is the Court's willingness to look at the substance of the rights asserted and not be governed by mere labels. See also *In re Gault*, 387 U.S. 1; *Long* v. *District Court of Iowa*, 385 U.S. 192. The right to question the correctness of a decision which will cost a tenant and his family their shelter is surely a substantial one. The civil "label of convenience" should not foreclose recognition of this reality.

> "The so-called 'civil' problems of the poor may involve the defense of a landlord-tenant action for possession. Inability to defend this case for failure to post a bond or to obtain counsel will often result in an eviction from the premises—a result which in one sense is more of a deprivation of liberty than a suspended sentence, perhaps even more than incarceration. Imprisonment restrains the individual in his freedom of movement alone; eviction may condemn one to an indeterminate sentence of inadequate housing or no housing at all.

> This is not to say that the eviction process has no place in the law because of its harshness, any more than the criminal process should be condemned because it results in sending men to jail. But when the procedural fairness of the systems is in issue, it appears incongruous that the indigent tenant may be evicted without an opportunity for an impartial hearing, whereas the financial disabilities of the indigent criminal accused are studiously removed." Willging, *Financial Barriers and the Access of Indigents to the Courts,* 57 GEO. L.J. 253, 270 (1968).

As two Justices of this Court have said:

> "On numerous occasions this Court has struck down financial limitations on the ability to obtain judicial review. . . . We have recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of a person's purse. It is true that these cases have dealt with criminal proceedings. But the Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters. I can see no more justification for denying an indigent a hearing in an eviction proceeding solely because of his poverty than for denying an indigent the right to appeal . . . , or the right to file a habeas corpus petition . . . , or the right to obtain a transcript necessary for appeal. . . ." *Williams* v. *Shaffer,* 385 U.S. 1037, 1039 (dissenting opinion).

In the case of *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663, the Court again indicated that the application

of the equal protection clause to economic discrimination would not be limited to criminal prosecutions. There the state's requirement of a $1.50 poll tax was held to deny equal protection to those citizens unable to pay it and, therefore, unable to vote.

Other courts have similarly declined to limit the clause to criminal cases. See, e.g., *Barber* v. *Gladden,* 298 P. 2d 986 (Ore. 1956) (bond on appeal from dismissal of habeas corpus petition); *Bynum* v. *Comm'n on Forfeited Rights,* 410 F. 2d 173 (2d Cir. 1969) ($5.00 fee for administrative hearing re restoration of voting rights); *Robertson* v. *Greene,* No. 336-565, Ore. Circuit Court, Multnomah County, June 14, 1967 (filing fees in divorce action); *Jeffreys* v. *Jeffreys,* 57 Misc. 2d 416, 296 N.Y.S. 2d 74 (Kings Co. 1968) (publication costs in divorce proceedings); *Sanks* v. *Georgia,* No. 266, O.T. 1969 (lower court decision) (bond in eviction proceedings).

Griffin and its progeny, then, make clear that "lines drawn on the basis of wealth or poverty, like those of race . . . are traditionally disfavored." *Harper* v. *Virginia Bd. of Elections, supra* at 669. Summing up its decisions in this area, the Court has recently said:

> "Our decisions for more than a decade now have made clear that *differences in access to the instruments needed to vindicate legal rights,* when based upon the financial situation of the defendant, are repugnant to the Constitution." *Roberts* v. *LaVallee,* 389 U.S. 40, 42. (Emphasis added.)

2. *The Financial Discrimination Effected by Conn. Gen. Stat. §52-542 Does Not Promote a Compelling State Interest, Nor Is It Rationally Related to the Attainment of a Legitimate State Objective.*

To say that the right of equal access to the appellate courts is guarded by the equal protection clause is not to say that a state may never regulate that right. Nor is a state prevented from making distinctions among its citizens. At a minimum, however, the state's classification must be rationally related to the attainment of a legitimate objective of governmental action. See, e.g., *Rapid Transit Corp.* v. *City of New York,* 303 U.S. 573, 578. More importantly, where the state's classification is based on certain suspect criteria or affects rights deemed particularly important, mere rational relationship between the classification and the end sought will not justify the discrimination; a showing that the classification is necessary to promote a compelling governmental interest is required. *Shapiro* v. *Thompson,* —— U.S. ——, 37 U.S.L.W. 4333, 4338. The economic discrimination effected by the statute in question fails either test.

a. The Statute's Classification Is Based on a Suspect Criterion, Adversely Affects a Fundamental Citizen Interest, Yet Is Not Necessary to Promote a Compelling Governmental Interest.

This Court has placed state discrimination among citizens on the basis of wealth in the same "traditionally disfavored" category as discriminations on the basis of race or color. *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663, 669. State laws trenching upon freedom from official discrimination based on race have been held to be "'constitutionally suspect' . . . and subject to the 'most rigid scrutiny' . . . and 'in most circumstances irrelevant' to any

constitutionally acceptable legislative purpose. . . ." *McLaughlin* v. *Florida,* 379 U.S. 184, 192, and cases there cited.

Thus, a law which discriminates on the basis of poverty should be equally disfavored. Like a racial classification,

> "Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, . . . and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida, supra* at 196.

Treating discrimination against poor citizens the same as discrimination against black citizens is in keeping with the highest purposes of the equal protection clause, as stated in *Hernandez* v. *Texas,* 347 U.S. 475, 478:

> "Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated."

There seems little question that this Court, in view of its unbroken line of cases striking down various forms of pecuniary classification, has applied this stringent test.

See *Shapiro* v. *Thompson, supra,* 37 U.S.L.W. at 4345 (dissenting opinion of Harlan, J.).

The Connecticut surety bond statute also constitutes a serious obstacle to access to the courts of the state and, therefore, adversely affects a most important interest of all citizens. Thus, there is a second ground for demanding a showing that the statute is necessary to attain the state's purpose. The critical nature of access to the courts, particularly the appellate courts, is discussed elsewhere in this brief. See part II, *supra.* The point need not be belabored; this Court's recognition of it is testified to by cases from *Griffin* to *Williams* v. *Oklahoma City,* decided last term.

The effect, in constitutional terms, of a holding that a classification is based on a suspect criterion, like wealth, or affects a fundamental citizen interest, like access to the courts, is invalidation of the statutory classification, unless its *necessity* to achieve a *compelling* governmental interest is clear. *Developments in the Law—Equal Protection,* 82 HARV. L.REV. 1065, 1101, 1121 (1969). The aim of §52-542 is fairly clear: to protect a landlord from the loss of rents he might have collected had the appealing tenant vacated, pursuant to the eviction judgment, and the landlord rented the premises to another. And, the tenants here do not question the legitimacy of the state's objective.[10] But, is this interest of such a magnitude as to allow the state to pursue it by eliminating appeals by all those too poor to give the landlord a surety bond? Is the requirement of a surety bond as a prerequisite to appeal necessary to achievement of the state's purpose? In view of the "less

[10] Tenants do, however, challenge the legitimacy of the state's objective under the amended version of §52-542. See pp. 56-60, *infra.*

drastic means" available to attain the end of the statute, *Shapiro* v. *Thompson, supra* at 4338, the answer must be negative.

Each of the two bonding companies that expressed a willingness to write the type of bond required by §52-542 demanded cash collateral in the full amount of the bond (A. 11). Since this could have amounted to several hundred dollars (see part I, *supra*), it was impossible for the tenants to comply and, therefore, unless the requirement of a surety bond was waived, impossible for them to appeal.

They offered a perfectly reasonable alternative: the deposit of each month's rent, as it became due, in escrow with the court or some responsible person (A. 10, 16).

Their failure to deposit the rent as it became due would have been grounds for dismissal of the appeal (A. 19). But this rational approach to the problem was rejected by the Housing Authority and the trial judge.[11]

The payment of rent, or use and occupancy charges, into escrow with the court or some responsible person or entity while the appeal proceeds would protect the landlord at least as well as a surety bond from the loss of rents due him. The landlord would not be undersecured nor the tenant overburdened because of a wrong guess as to the length of the appeal period. (See part I, *supra*.) And it would not pose the same kind of problem as the requirement, prompted by the present statute, that an indigent tenant produce, in five days, a large cash sum (or some

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[11] Massachusetts has recently amended its summary process statute to allow the waiver of the appeal bond requirement. The statute, as amended, does not require an alternate form of security. Mass. Gen. Laws ch. 239, §5, as amended by Mass. Laws 1969 ch. 366.

other form of liquid collateral), an impossibility for most poor persons.[12]

Thus, the demand of a surety bond, at the same time as it closes the courts of appeal to the poor, is unnecessary to the statute's purpose, protection of the landlord. To paraphrase this Court's opinion in the welfare residency cases: Since the landlord's interests can be protected by the deposit of rent in escrow as the appeal proceeds, "it is unreasonable to accomplish this objective by the blunderbuss method of denying" appeals to all tenants who cannot obtain a surety bond. *Shapiro* v. *Thompson, supra* at 4339.

This approach, similar to the concept of overbreadth employed in First Amendment cases, is traditional when this Court views classifications drawn on suspect lines or which impair some fundamental interest. See, e.g., *McLaughlin* v. *Florida, supra; Carrington* v. *Rash,* 380 U.S. 89.

> "Thus, the cases indicate that when a fundamental interest is impaired or a suspect distinction drawn, the Court will demand a convincing demonstration that the classification is well tailored to achieve the statutory objective. . . . The State must show at least that this classification is more than just one of several reasonable ways of achieving its goals." *Developments in the Law—Equal Protection, supra* at 1122.

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[12] Not only the destitute find it difficult to meet these standards. Most middle-income tenants would have difficulty amassing the liquid collateral for a bond perhaps ten times their monthly rent of, say, $150-200. A small businessman, paying $250-300 per month for his premises, may likewise be hard pressed to raise $2500-3000 in liquid collateral within five days.

b. The Statute's Classification Is Not Rationally Related to a Legitimate State Objective.

Even applying the less stringent "rational relationship" test to the surety bond statute compels the conclusion that the statute must fall. For it violates one of the basic strictures for a valid classification; viz., it does not include in the classes it creates all and only those persons similarly situated with respect to the purpose of the law. *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415; Tussman & tenBroek, *The Equal Protection of the Laws,* 37 CALIF. L.REV. 341, 346 (1949).

The statute's purpose is to save the landlord harmless from losses of rent brought on by the tenant's appeal and consequent retaining of possession. But it excludes from appeals both those who can and those who cannot provide security to the landlord, because the ability to give a surety bond is not related to the ability to protect the landlord. As pointed out above, there are other ways of effecting the latter. Thus, the state's classification burdens persons in a way unrelated to its purpose. Such an "over-inclusive classification" is not permitted by the equal protection clause.

> "[L]egislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection clause does require that, in defining a class subject to legislation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made.'" *Rinaldi* v. *Yeager,* 384 U.S. 305, 309.

In *Rinaldi* this Court invalidated a New Jersey statute requiring incarcerated defendants to reimburse the state

out of their prison pay for the cost of transcripts provided in connection with their unsuccessful appeals *in forma pauperis*. Insofar as the statute was intended to deter frivolous appeals, the Court found that, in its requirement of reimbursement from all incarcerated prisoners, it included both frivolous and non-frivolous, albeit unsuccessful, appellants.

A Texas statute denying the vote to all servicemen stationed in that state, including those who had established a permanent residence there, was struck down in *Carrington* v. *Rash*, 380 U.S. 89. Welfare residency laws were found constitutionally deficient because, though they were justified as an attempt to discourage only those indigents who would travel from state to state solely to obtain larger benefits,

> "none of the statutes before us is tailored to serve that objective. Rather, the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits." *Shapiro* v. *Thompson, supra* at 4337.

In the case at bar the class of barred appellants-tenants is all-inclusive, lumping those who can provide security to their landlord (albeit not a surety bond) with those who cannot. In effect, the statute enacts an irrebuttable presumption that tenants who cannot post a surety bond cannot secure their landlords from loss. Such a presumption is belied by the facts.

Since the ability of the tenants to give a bond with surety is unrelated to their ability to secure the landlord, there is no defensible interest served by focusing on the former as a classifying feature in a statute with the latter

as its purpose. Thus, the surety bond statute fails even the traditional equal protection tests.

D. The State's Prescription of a Surety Bond as a Condition Precedent to the Tenant's Appeal Is Not Reasonably Related to a Legitimate State Objective, and, Therefore, the Dismissal of the Appeal Because of Their Financial Ability to Provide Such a Bond Deprived Them of Liberty and Property Without Due Process of Law.

Connecticut's procedure in eviction actions wisely includes an appeal from the judgment of the trial court to the Appellate Division of the state Circuit Court. Conn. Gen. Stat. §52-534. Therefore, it makes no constitutional difference that the state need not have created this additional step.

> "[I]t is now fundamental that, once established, these avenues [of appellate review] must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Williams* v. *Oklahoma City*, —— U.S. ——, 37 U.S.L.W. 4524.

The due process of law which must be accorded tenants before they are deprived of the liberty and property interests represented by their leasehold includes in Connecticut appeals from eviction judgments. *Frank* v. *Mangum*, 237 U.S. 309, 327; *Walker* v. *Sauvinet*, 92 U.S. 90, 93.

States may, of course, impose reasonable conditions on the right to appeal, such as fixing the time within which an appeal may be taken, delimiting the scope of review, and establishing the procedure by which alleged errors may be brought before the appellate tribunal.

"But neither the fact that a State may deny the right of appeal altogether nor the right of a State to make an appropriate classification, based on differences in crimes and their punishment, nor the right of a State to lay down conditions it deems appropriate for criminal appeals, sanctions differentiations by a State that have no relation to a rational policy of criminal appeal or authorizes the imposition of conditions that offend the deepest presuppositions of our society." *Griffin* v. *Illinois, supra* at 21-22 (Frankfurter, J.).

This concept is but an extension to appeals, when they are provided by the state, of what has long been the law regarding rights of action generally.

"The Fourteenth Amendment does not prevent a State from prescribing a reasonable and appropriate condition precedent to the bringing of a suit of a specified kind or class so long as the basis of distinction is real, and the condition imposed has reasonable relation to a legitimate object." *Jones* v. *Union Guano Co.*, 264 U.S. 171, 181.

The prerequisite of a surety bond, however, is not reasonably related to the only legitimate state interest, protecting the landlord from rents lost as a result of the appeal. For such protection can be provided in alternate ways, as is pointed out *supra*, pp. 42-43. Therefore, it "bears no relation to a rational policy of . . . appeal" and, in its emphasis on wealth as the key to judicial review, it offends one of the deepest presuppositions of our society, equal justice under law.

"[T]he constitutional right under the Due Process Clause is simply the right not to be denied an appeal

for arbitrary or capricious reasons." *Griffin* v. *Illinois*, *supra* at 37 (dissenting opinion).

Since the giving of a surety bond is unrelated to any legitimate governmental object, it is not a reasonable or appropriate condition precedent to appeal. Dismissal of the Tenants' appeal when they failed, because of financial inability, to provide the surety bond was an arbitrary and capricious denial of their appeal.[13]

E. The Dismissal of the Tenants' Appeal Because of Their Financial Inability to Post a Surety Bond Violated Their Right to Petition the Government for Redress of Grievances.

1. *The Constitution Establishes a Right to Litigate, to Petition the Courts for a Redress of Grievances.*

One of the rights specifically protected by the First Amendment to the U. S. Constitution is the right of the people "to petition the Government for a redress of grievances." This right, protected against federal incursion by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the states. See, e.g., *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 276-77, and cases there cited.

In a series of recent cases, this Court has recognized that litigation is a form of petition, for judicial redress of grievances. *United States* v. *Robel*, 389 U.S. 258, 282 n. 1 (White and Harlan, JJ., dissenting). With the case of

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[13] The imposition of an arbitrary condition to the right of appeal adversely affects *all* tenants, not just those too poor to meet it. For its very presence may serve to deter exercise of the right, and, in the case of this surety bond statute, deprives of the use of the fee and collateral required even those who can and do meet those conditions. Cf. *Sniadach* v. *Family Finance Corp.*, —— U.S. ——, 37 U.S.L.W. 4520, 4521 (Opinion of Harlan, J.).

NAACP v. *Button*, 371 U.S. 415, this Court began to make clear that the right to repair to court for a resolution of grievances is included within the freedoms of expression guarded against federal and state intrusions. Indeed, said the Court (at 430):

> "[U]nder the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances."

In *Button* the NAACP's activities in advising Negroes of their constitutional rights, encouraging their assertion through litigation, providing lawyers to conduct the suits and financing the actions was held paramount to Virginia's interest in regulating the practice of law. The Court referred to First Amendment rights to enforce constitutional rights through litigation (371 U.S. at 440), and its opinion emphasized the importance of litigation as a "means for achieving the lawful objectives of equality of treatment by all governments, federal, state and local". (371 U.S. at 429).

Subsequently, *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1, vindicated the rights of railroad workers to carry on a joint plan to advise their injured brothers to obtain legal representation in obtaining compensation and to recommend specific lawyers to handle such litigation.

The litigation concerned in the *Trainmen* case was not of constitutional scale; it was not a "form of political expression," as the Court found to be present in *Button*, 371 U.S. at 429. It involved merely suits for money recovery, for damages suffered. Yet, the Court held:

> "The State can no more keep these workers from using their cooperative plan to advise one another than it

could use more direct means to bar them from resorting to the courts to vindicate their legal rights. *The right to petition the courts* cannot be so handicapped." 377 U.S. at 7. (Emphasis added.)

In *United Mine Workers* v. *Illinois Bar,* 389 U.S. 217, the Illinois Supreme Court had limited the decision in the *Trainmen* case to plans which, though they involved advice to consult specific attorneys, stopped short of employing attorneys to represent union members. It also had limited the applicability of *NAACP* v. *Button* to litigation that could be characterized as "political expression." But this Court rejected both limiting constructions.

> "We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. 'All these, though not identical, are inseparable.' *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945). See *DeJonge* v. *Oregon,* 299 U.S. 353, 364 (1937)." 389 U.S. at 222.

The Court went on to hold that these rights were endangered as much by "indirect restraints" as by laws specifically prohibiting their exercise, and that even legislation "enacted for the purpose of dealing with some evil within the State's legislative competence, . . . [and] in fact provid[ing] a helpful means of dealing with such an evil" cannot be sustained if it "actually affect[s] the exercise of these vital rights." *Ibid.*

Invoking these principles the Court squarely held

> "that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights." *Id.* at 221-222.

The rights guaranteed by the First Amendment are the rights of individuals—to speak freely, to petition and to assemble. The right of association is merely an extension of this individual freedom, a "method of making more effective, of giving greater depth and scope to, the individual's needs, aspirations and liberties." Emerson, *Freedom of Association and Freedom of Expression,* 74 YALE L.J. 1, 4 (1964). *Accord, NAACP* v. *Alabama,* 357 U.S. 449, 460. Though in each of the three cases discussed above the petitioner was an organization, none of the litigation involved in any of the cases was litigation by the organization.

Therefore, it is clear that the right with which the Court is concerned is the right of the individual, not the organization, to litigate. So understood, *Button, Trainmen* and *United Mine Workers* confirm the existence of a federal constitutional right, protected by the First and Fourteenth Amendments, to litigate, to petition the courts for a redress of grievances. *U. S.* v. *Robel,* 389 U.S. 258, 282 n. 1 (dissenting opinion).

Where the state has provided for appellate review, the right to litigate must encompass the right to review. For the value of the right to petition the courts of first instance is intimately tied to the right of review. *Cole* v. *Arkansas,* 333 U.S. 196, 201, 202; *Frank* v. *Mangum,* 237 U.S. 309, 327; *Griffin* v. *Illinois,* 351 U.S. 12, 18, 23. There the Court said:

> "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance."

The absence of the right of review removes one of the principal restraints on arbitrary conduct in passing on petitions for redress in the trial court. The right to a hearing before deprivation of important rights, recently reaffirmed by this Court, *Sniadach* v. *Family Finance Corp.*, —— U.S. ——, 37 U.S.L.W. 4520, is denigrated where the procedures or outcome of the hearing cannot be questioned.

> "Justice demands an independent and objective assessment of a district judge's appraisal of his own conduct in a criminal trial. . . ." *Coppedge* v. *U. S.*, 369 U.S. 438, 455-56 (Stewart, J.).

Connecticut promises to tenants a right to litigate the issues involved in their eviction, including a right to appeal the decision of the trial court. In this context the right to litigate, the right to a hearing encompasses the right to review.

2. *The Surety Bond Statute Is an Overly Broad Restriction of the Right to Litigate.*

As a freedom protected by the First and Fourteenth Amendments, the right to petition the courts is not an absolute, illimitable right, but it is entitled to "the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U.S. 516, 530. The special

protection afforded these freedoms requires the state to show a "compelling" state interest to which these personal liberties are subordinate. *Bates* v. *Little Rock,* 361 U.S. 516, 524. Moreover,

> "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same purpose." *Shelton* v. *Tucker,* 364 U.S. 479, 488.

See also *U. S.* v. *Robel,* 389 U.S. 258; *NAACP* v. *Button,* 371 U.S. 415, 433, 438.

As stated above, the Tenants do not quarrel with the state's decision to protect the landlord. But, simply denying appeals to all those unable to purchase a surety bond paints with far too broad a brush, excluding from the appellate process many tenants who can secure the landlord, along with those tenants who cannot. Such a sweeping restriction on the right to litigate, as expanded by the State of Connecticut to include appellate review, suffers from the vice of "overbreadth" condemned by this Court so often. Here, too, condemnation is appropriate.

F. The Empowering of a Private Party, the Surety Required by §52-542, to Grant or Withhold Access to the Appellate Courts Violates the Due Process Clause.

There is yet another way in which the surety bond statute effectively deprives the tenants of liberty and property

without due process. The statute places in the hands of a private party, the surety, whether he be a friend or relative of the tenant or a surety company, the untrammeled power to grant or withhold access to its appellate courts. It makes the answer to a tenant's petition for redress of grievances turn on a commercial transaction; indeed, whether the tenant may petition at all depends on whether he can meet the surety's terms, in this case, pay his fee and furnish collateral.

Tenants are well aware that requirements of surety bonds appear often in our law. But, to paraphrase Justice Frankfurter, the admonition of De Tocqueville not to confuse the familiar with the necessary (or the right) has vivid application to the law's demand for bonds. *Griffin* v. *Illinois,* 351 U.S. 12, 20 (concurring opinion).

When one considers the documented abuses of the bondsman's function in criminal cases, Freed and Wald, BAIL IN THE UNITED STATES: 1964, 22-38, and recalls this Court's holding that "a vested cause of action is property and is protected from arbitrary interference," *Gibbes* v. *Zimmerman,* 290 U.S. 326, 332, it does not seem unreasonable to question the constitutionality of §52-542 on this ground. In demanding a surety bond the statute and the courts, in enforcing the statute, subject the tenant to the unregulated caprice of the surety.

The surety has unlimited power to refuse to write a bond for any individual for any reason, however capricious and unrelated to the concerns of the statute requiring a bond. Also, although the premium on the bond may be regulated, there is no supervision over the amount which the surety may demand as collateral. The court fixing the

amount of the bond may assume that the litigant is faced only with the legal premium, while the reality may be, as here, that he will be required by the surety to put up collateral equalling the entire amount of the bond. The surety thus becomes the arbiter of whether the litigant proceeds with his case, not the court or the legislature.

Without any legal or social duty to grant a bond, his motivation at best is simply a matter of dollars and cents; at worst, a compound of every arbitrary and discriminatory urge to which unlimited and irresponsible power is prey.

An unwavering demand for a surety bond, and the consequent relegation of the tenants to the bondsman's whims, cannot be squared with the due process clause of the Fourteenth Amendment. This conclusion is supported by the decisions of this Court in *Eskridge* v. *Washington State Board,* 357 U.S. 214; *Lane* v. *Brown,* 372 U.S. 477; and *Anders* v. *California,* 386 U.S. 738.

In *Lane* v. *Brown, supra,* at 485, this Court said

> "The provision before us confers upon a state officer outside the judicial system power to take from an indigent all hope of any appeal at all. Such a procedure, based on indigency alone, does not meet constitutional standards."

At least in *Lane* and *Anders,* the indigent's appeal depended upon the decision of an attorney, an officer of the court. Here it is a private individual, outside the judicial system, in business for profit, who can "take from an indigent all hope of any appeal at all."

G. The Surety Bond Statute Is Unconstitutionally Vague as to the Amount of the Bond Required, Thus Empowering the Trial Judge to Arbitrarily Prevent Review of His Own Decisions.

The Connecticut statute in question, §52-542, is indefinite as to the amount of the bond to be given by tenants, stating only that it should be

> "sufficient . . . to answer for *all rents that may accrue* or, where no lease had existed, for the reasonable value for such use and occupancy, *during the pendency of such appeal, or which may be due* at the time of its final disposal. . . ." (Emphasis added.)

(The recent amendment does not cure the vagueness, for it merely makes clear that rent claimed to have accrued since the commencement of the action is included, leaving unchanged the quoted language.)

The trial court sets the amount of the bond, *Housing Authority* v. *Jones*, 5 Conn. Cir. 350, 252 A. 2d 465, 468, "on its own motion or on motion of the parties." P.A. No. 296 (Conn. Gen. Assembly, 1969).

Since the period of appeal is indefinite, the amount of the bond is uncertain. The effect of the statute is to allow trial judges in eviction actions to foreclose review of their own actions, no matter how arbitrary and no matter how grave the consequences to tenants by setting a bond which the tenant is unable to meet. Combined with the holding of the Appellate Division in this case that no security other than a surety bond will suffice, this power to prevent review is formidable and, in the case of the poverty-stricken tenant, absolute.

This statute fundamentally affronts the rule of law embodied in the due process clause by permitting arbitrary and erratic judicial activity. Concern for this consequence has been evident in this Court's vagueness decisions. E.g., *Herndon* v. *Lowry,* 301 U.S. 242, 263; *NAACP* v. *Button,* 371 U.S. 415, 433; *Giaccio* v. *Pennsylvania,* 382 U.S. 399, 403. Justice Frankfurter was most eloquent in addressing himself to this danger.

> "[L]egislation must not be so vague, the language so loose, as to leave to those who have to apply it too wide a discretion. . . ." *Kingsley Int'l Pictures Corp.* v. *Regents,* 360 U.S. 684, 694 (concurring opinion).
>
> "[D]iscretion must be judicial discretion. It must be subject to rational criteria, by which particular situations may be adjudged." *Brown* v. *Allen,* 344 U.S. 443, 496 (separate opinion).

The criterion for the exercise of discretion must not be "susceptible of sweeping and improper application," *NAACP* v. *Button, supra,* at 433, or "merely a shelter for . . . judges to respond according to the individual will." *Brown* v. *Allen, supra,* at 496.

> "Discretion without a criterion for its exercise is authorization of arbitrariness." *Ibid.*

Moreover, the Court has made clear its realization of the import of these propositions for review of federal district judges' certifications that an appeal *in forma pauperis* is not taken in good faith.

> "Such certification is not final in the sense that the convicted defendant is barred from showing that it was unwarranted and that an appeal should be allowed.

> Of course, certification by the judge presiding at the trial carries great weight but, *necessarily, it cannot be conclusive." Johnson* v. *U. S.*, 352 U.S. 565, 566 (*per curiam*). (Emphasis added.)

This Court has condemned provisions which permit a trial judge to review his own decision and to prevent an indigent from taking an appeal as constitutionally invalid. *Coppedge v. U. S.*, 369 U.S. 438. See *Eskridge* v. *Washington State Board*, 357 U.S. 214; *Draper* v. *Washington*, 372 U.S. 487; *Anders* v. *California*, 386 U.S. 738.

The power placed in the trial judge's hands may be exercised by him without reference to any rational standard since the period of appeal is so indefinite. The practical effect of the statute is to make his decision as to the amount of bond conclusive of proceedings to review his *actions. Where lower court proceedings are summary*, decisive and critical to the litigant, as they were to the Tenants here, the Constitution demands that review of those proceedings not be at the sufferance of the trial judge.

II. The Surety Bond Statute, Insofar as It Requires a Bond Sufficient to Cover Rents Claimed to Have Accrued While the Action Was Pending in the Trial Court, Violates Both the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

A landlord may obtain through the statutory "summary process" remedy in Connecticut only a "judgment . . . that [he] recover possession or occupancy of the premises with his costs." Conn. Gen. Stat. §52-534. He may not recover a judgment for rent. *Feueck* v. *Nowakowski*, 146 Conn.

434, 151 A. 2d 891 (1959); *Housing Authority* v. *Alprovis*, 19 Conn. Sup. 37, 109 A. 2d 884 (1954); *Pollard* v. *Pollard*, 1 Conn. Cir. 143, 177 A. 2d 471 (1961); see *Cianciolo* v. *Plano*, 1 Conn. Cir. 206, 181 A. 2d 611 (1962).

Prior to amendment, §52-542 was not clear about the necessity for a bond to cover rents claimed to have accrued while the action progressed through the trial court; in addition to answering for rents that might accrue during the appeal, the surety bond was to answer for rents "which may be due at the time of [this appeal's] final disposal." And, the trial judge in the case at bar indicated that he might construe the statute to require such a bond (A. 17). Public Act 296 of the 1969 regular session of the Connecticut General Assembly resolved this question of interpretation (and compounded the constitutional deficiencies of the statute). The bond with surety must be

> "sufficient . . . to answer for all rents that have accrued from the commencement of the action to the date of judgment,"

as well as rents accruing during the appeal.

Requiring, as a condition precedent to appeal from an eviction judgment, a bond with surety in an amount sufficient to cover sums of money to which no court has ever held the landlord entitled promotes no legitimate state objective and deprives tenants of their property without a hearing, in contravention of the due process and equal protection clauses of the Fourteenth Amendment.

1. *The Amended Statute Deprives Tenants of Their Property Without a Hearing.*

Just last term this Court reaffirmed the necessity of notice and hearing before a citizen may be deprived of his property. *Sniadach* v. *Family Finance Corp.*, —— U.S. ——, 37 U.S.L.W. 4520. The amended version of the Connecticut surety bond statute requires a tenant to part with the fee and liquid collateral necessary to obtain the inflated surety bond in advance of any adjudication that the landlord is entitled to the rent claimed. The very question on appeal may be, as it is in this case (A. 28, 29), the right of the landlord to collect rent at all or in the amount claimed. The garnisheed wages involved in *Sniadach* amounted to slightly more than sixty dollars; the amended surety bond statute requires the tenants to put up hundreds, perhaps thousands, of dollars as a condition to their appeal, without a hearing on the landlord's claim of rent.

2. *The Amended Statute Furthers No Legitimate State Purpose.*

In Tenants' earlier arguments regarding equal protection and due process (sections C, D, and E of part III, *supra*), the legitimacy of the state's purpose in requiring protection for the landlord from rents lost while the appeal proceeds was conceded. The presence of such a proper objective is the *sine qua non* of governmental discrimination and regulation of citizens' rights, and this Court has struck down state action where such a purpose was lacking. *Shapiro* v. *Thompson*, —— U.S. ——, 37 U.S.L.W. 4333, 4335-37; *Carrington* v. *Rash*, 380 U.S. 89.

No such objective is apparent in the requirement of a bond to cover claimed back rents. The landlord has no money judgment for such rents that the legislature or

appellate courts might seek to protect. Compare *Nat'l Union of Marine Cooks and Stewards* v. *Arnold*, 348 U.S. 37. In fact, the issues involved in the eviction judgment may well be totally unrelated to the rent due; e.g., whether the tenant was a nuisance or violated conditions of his lease. Even where the eviction is for nonpayment of rent, the landlord need allege and prove only nonpayment for one month. Conn. Gen. Stat. §52-532. A judgment in his favor on that ground, therefore, says nothing about rent he may claim for subsequent months. And, as pointed out above, where the landlord's right to collect the claimed rent is at issue on the appeal, the effect of the amended statute is to deprive the tenant of the enjoyment of that sum while he contests the landlord's right to it.

The surety bond required by 1969 Pub. Act 296 is simply obstructive and invidiously discriminatory as to the poor, without promoting any proper purpose.[14] Therefore, as a

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[14] Tenants' research of the legislative history of P.A. No. 296 (House Bill No. 7543) indicated that no public hearings were had on the legislation. It passed the House of Representatives on the "consent calendar" without discussion and passed the Senate without discussion. The following is the transcript of its passage in the Senate:

> The Clerk: Calendar No. 823, File No. 679. Favorable report of the Joint Standing Committee on Judiciary and Governmental Functions. On House Bill No. 7543. An Act Concerning Bonds on Appeals in Summary Process Actions.
>
> Senator Fauliso: Mr. President, I move acceptance of the Committee's favorable report and passage of the bill.
>
> The Chair: Question is on acceptance of the Committee's favorable report and passage of the bill, will you remark.
>
> Senator Fauliso: Mr. President, the posting of the bond merely insures the payment of the rent while the appeal is pending. I urge passage.
>
> The Chair: Any further remarks. If not, as many who are in favor signify by saying aye, contrary minded. The bill is passed.
>
> *Transcript of Proceedings*, Conn. Gen. Assembly. The Senate. May 15, 1969 pp. 62-63.

condition precedent to appeal, it contravenes both the due process and equal protection clauses.

1969 Pub. Act 296 is effective on October 1, 1969, Conn. Gen. Stat. §2-32, and, therefore, will be in operation before the Court decides this case. Moreover, as pointed out above, the present version of §52-542 is susceptible to a literal interpretation requiring a bond for back rent, and the trial judge in this case indicated his inclination to so construe it. Should this Court, in view of the availability of protective devices rationally related and narrowly tailored to protection of the landlord from rents lost because of the appeal, declare the present §52-542 unconstitutional, it is possible that on remand the new statute may be applied or the present statute construed to require a bond for alleged back rent. In view of the foregoing, the constitutionality of such a bond as a prerequisite to appeal is properly before the Court, and, Tenants respectfully suggest, the resolution of that issue is essential to a disposition of the case.

Conclusion

For the reasons above stated, it is respectfully submitted that the judgment of the Appellate Division of the Connecticut Circuit Court should be reversed, and the case remanded with directions to reinstate appellants' appeal.

Respectfully submitted,

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July 15, 1969

TABLE I

CASE	DATE FILED	JUDGMENT	DECISION OF APPELLATE DIVISION	ENTRY OF JUDGMENT TO DECISION OF APPELLATE DIVISION
Cianciolo v. Plano 1 Conn. Cir. 206, 187 A.2d 611	March 1961		February 1962	
Macha v. Eastern Conn. Training School 1 Conn. Cir. 469, 187 A.2d 638	March 1961		October 1962	
Fortuna, Inc. v. Lyons 1 Conn. Cir. 257, 182 A.2d 921	April 1961		May 1962	
Newton Co. v. Kardys 1 Conn. Cir. 97, 174 A.2d 548	August 1961		October 1961	
Pollack v. Ro-An, Inc. 1 Conn. Cir. 17[illegible], 180 A.2d 293	November 1961		December, 1961	34 days
Sun Oil Co. V. Keane 2 Conn. Cir. 574, 203 A.2d 88	June 1963		March 1964	
Pander v. French 3 Conn. Cir. 561, 221 A.2d 274	October 1965	December 1965	March 29, 1966	88 days

TABLE I (Cont'd)

CASE	DATE FILED	JUDGMENT	DECISION OF APPELLATE DIVISION	ENTRY OF JUDGMENT TO DECISION OF APPELLATE DIVISION
United Illuminating Corp. v. Syntex Rubber Corporation 4 Conn. Cir. 303, 231 A.2d 89	January 1966		September 1966	
Housing Authority v. Simmons 5 Conn. Cir. 287, 250 A.2d 527	July 19, 1967	January 16,1968	March 1, 1968	43 days
Conn. Betterment Corp. v. Ponton 5 Conn. Cir. 265, 250 A.2d 340	January 1968	February 27, 1968	May 1968	93 days
Housing Authority v. Jones 5 Conn. Cir. 350, 252 A.2d 465	April 1968	August 1968	December 1968	117 days
Messina v. Coburn CV6-688-27007	August 1968	August 21, 1968	December 1968	103 days
			Average	80 days

CIRCUIT COURT

40074	CASE NAME (Omit if same as Judgment Creditor(s) vs. Judgment Debtor(s))	CIRCUIT NO	HELD AT (Town)
NAME(S) OF JUDGMENT CREDITOR(S)	Montlick vs Bridges, etal	6	New Haven

T OF DAMAGES	AMOUNT OF COSTS	TOTAL DAMAGES AND COSTS	DATE OF JUDGMENT	AMOUNT OF WEEKLY PAYMENTS
			NAME(S) OF JUDGMENT DEBTOR(S)	

☐ ATTORNEY FOR PLAINTIFF(S) ☐ PLAINTIFF(S)

Bond ordered in The amount of $700.00

Stapleton, J.

.69

☐ ATTORNEY FOR ~~DEFENDANT~~(S) ☐ ~~DEFENDANT(S)~~

Schwartz, Clerk

MAY 14 REC'D

NOTICE TO JUDGMENT DEBTOR(S)

1. The above named Judgment Creditor(s) recovered judgment against the above named Judgment Debtor(s) for Damages and Costs as shown above.
2. An order was entered for Weekly Payments in the amount shown above, beginning one week from the above Date of Judgment.
3. *If Weekly Payments are not made in accordance with the order of the court, an execution may be issued against your wages or property.*
4. *Do not make payment to the clerk of the court.*
5. *Make payment to Plaintiff or Plaintiff's Attorney.*

Assistant Clerk of said court _____

EXHIBIT A